Agreement in Principle

Ms VIRGINIA JUDGE (Strathfield—Minister for Fair Trading, Minister for the Arts) [4.39 p.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Residential Tenancies Bill 2010, which will modernise and reform the existing tenancy laws. Before I commence my agreement in principle speech I thank the Department of Fair Trading officers for their amazing hard work on preparing this bill. Also, I thank my ministerial staff, particularly Gabby O'Neill and Lucas Kolenberg, for their effort and the tireless hours they spent working on this bill. I thank also Parliamentary Counsel and anyone else associated with the drafting of the bill. It is a large piece of legislation. People have put in a tremendous amount of work and effort, and I am grateful for their support. The Residential Tenancies Bill 2010 will modernise and reform the existing tenancy laws. The structure and composition of the residential rental market in New South Wales has significantly changed since the current laws were developed more than 20 years ago.

Families and older people are now a much bigger part of the rental market. Shared households are becoming increasingly common and many tenants now rent for their entire lives, compared to the past when renting was often seen as just a stepping stone into home ownership. About one-third of New South Wales households are currently living in approximately 800,000 rental properties, and this figure will only grow in the years ahead as our population expands. The changing rental market means it is becoming increasingly important to ensure that our tenancy laws are up-to-date, unambiguous and responsive to the needs of the community. We need a regulatory regime that reduces unnecessary costs, promotes equity and supports the future provision of rental housing in this great State of New South Wales.

Members will be aware that the tenancy laws have been under review for some time, with a view to replacing the current laws with more contemporary legislation. The review began in July 2005 when an options paper was released by one of my predecessors, the Hon. John Hatzistergos. I commend him and his staff at the time for starting this much-needed reform process. The rental market today is regulated by two separate pieces of legislation: the Residential Tenancies Act 1987 and the Landlord and Tenant (Rental Bonds) Act 1977. These Acts have remained largely the same and are no longer the best way to regulate modern residential tenancy relations in New South Wales. A lot has changed since the 1970s and 1980s, and the rental property market has not been immune to these changes. Rents are now mostly paid by electronic means, not by cash or cheque as they once were. Tenancy databases are a relatively new phenomenon. In the 1970s and 1980s the main way to check a tenant's rental history was on the phone to the former landlord or agent.

Security, safety and water conservation are much more topical issues now than they were in the past. Tenants are staying in the same rental property for longer. The average length of a tenancy has increased from about 18 months in the mid-1980s to twice as long today. Most mum and dad investors own only one or two rental properties, and the majority now choose the services of a professional agent to manage the tenancy, rather than do the work themselves. It is essential therefore that the law regulating this area reflects current market practices—the new modality—and is ready to stand the test of time in the twenty-first century. This Government wants to see landlords being able to manage their investments in a way that optimises their returns; at the same time it wants to see tenants having access to suitable rental accommodation and being able to make informed choices about where they live, how long they live there and what exactly they are paying for.

We want landlords and tenants to be clear about their rights so that they are empowered to enforce those rights. We want landlords and tenants to take a responsible approach to their obligations to each other, to the people they share their home with and to their neighbours and the beautiful wider community. We want to see a rental market that is efficient, responsive and well informed. This bill enables that vision. The bill strikes a fair and equitable balance between the often competing interests of landlords and tenants. The reforms embodied in the bill are aimed at the clear need to bring the current law up-to-date, which is acknowledged by all sides. Even the harshest critics of the bill concede that the law in many areas is in urgent need of reform. There is an old saying that all landlords are not devils and all tenants are not angels. This bill protects those who do the right thing from those who would not, whether they are tenants or landlords. It is about striking a balance.

The bill has been developed following a long period of extensive community consultation. There have been no fewer than three major rounds of public consultation during the course of the review. As I mentioned, it began with the release of an options paper in July 2005, which identified the key issues for discussion and possible reform alternatives. Close to 100 submissions were received in response to the options paper. The next public stage of the review came in September 2007 with the release of the report titled "Residential Tenancy Law Reform—A New Direction". The report outlined more than 100 reform proposals. Feedback from more than 1,600 individuals and groups was received in response to the new directions report. This consultation directly led to changes and refinements being made to a number of the reform proposals.

The third stage of the review saw a consultation draft bill released in November last year. More than 350 landlords, tenants, agents and other interested parties have taken the opportunity to let the Government know what they thought about the bill. While support for various provisions differed according to the perspectives of the person making the submission, hundreds of suggestions for how the bill could be improved were received and many of these have been adopted in the final bill. In addition to the public round of consultation, there have also been at least 20 meetings since 2005, either at a ministerial or departmental level, with key interest groups, including the Tenants Union, the Real Estate Institute and the Property Owners Association, to discuss the reform proposals. It cannot be said that the Government has failed to adequately consult on these long-awaited reforms.

Where sound policy arguments have been put forward in a constructive manner, the Government has taken these on board and amended the bill accordingly. Changes have also been made to the bill to address any unintended consequences that have been identified. This type of complex legislation, which affects so many people, given that almost everyone in the community is a tenants or a landlord at some stage of their lives, will always have critics. Landlords and agents will always say that the law goes too far, while tenants will say that the law does not go far enough. The Government believes that any fair reading will show that the bill contains a balanced and appropriate set of measures that will even-handedly update regulation of the rental market.

Many of the bill's provisions have simply been carried forward from existing legislation. Other provisions have been developed, having regard to effective legislation from interstate and internationally, and, importantly, in response to suggestions from tenants, landlords and the real estate industry. Arguments can always be made about why now is not a good time to make any changes to the tenancy laws. The rental market moves in a cycle. In some years there is a glut of rental properties and tenants have the upper hand. At other times, like now, when the vacancy rate is lower it can be difficult to find a place to rent in some areas. It seems that no matter where we are in the rental cycle the same cry is heard from real estate industry lobby groups and their supporters on the other side who say:

> making changes to the tenancy laws will drive away landlords push up rents which will, in turn, hurt tenants.

If we had listened to these doomsayers before we would still have the old feudal laws from the 1800s. One need only look at the history of the existing laws to see how wrong these claims can be. In 1977, when the Minister for Consumer Affairs, the Hon. Syd Enfield, first introduced the Rental Bond Board the Coalition vehemently opposed the bill, claiming it would result in fewer rental properties being built. They argued that within 12 months bonds would disappear because neither landlords nor tenants would want to be involved in the inevitable red tape that would follow from investing all this money in a government bureau. According to the Opposition at the time, in place of bonds, landlords would simply increase rents by 20 per cent. The Opposition came to that conclusion, having been taken in by a scare campaign run at the time by the Real Estate Institute and the Property Owners Association.

Were the critics right back in 1977? Did the practice of charging rental bonds disappear? No! They did not. Today every tenant still pays a rental bond, and having bonds held by the independent Rental Bond Board has been a hugely successful initiative. Similarly, the Coalition opposed the introduction of the current Residential Tenancies Act in 1987. The Opposition at the time said that it would frighten investors out of the rental market, until there are absolutely none left. The appalling legislation, according to the Opposition, would devastate the fragile private rental market, which will wither away as landlords take their money and invest elsewhere. Again, a fear campaign based on misinformation and untruths was run in the media. It is important to remember that in 1987 the vacancy rate was historically low at 0.6 per cent, a rate almost three times worse than it is claimed to be now.

However, with the benefit of hindsight we can all see that the scaremongering campaign whipped up in 1987 was wrong, and the dire predictions for the rental market never eventuated. Figures from the Rental Bond Board show an increase of more than 10 per cent in the total number of properties rented in the year or so after the current laws commenced. It was not long before the rental cycle had fully turned and prospective tenants were being enticed with offers of free rent and Gold Coast holidays. Today there are more than twice as many rental properties in New South Wales as there were then.

The Opposition has again fallen prey to industry scaremongering with wild claims that the bill, if implemented, will lead to landlords fleeing the State. Ironically, the Opposition now wishes to cling to some of the provisions from the 1987 Act it was so against at the time. There might be some validity in its argument if most of the reforms were pro tenant or the bill was generally biased in favour of tenants. But that is clearly not the case. The Government has gone to considerable effort to ensure this bill contains a balanced set of measures, which are not tilted towards either side. There are numerous reforms in the bill which address the concerns of landlords.

The number one issue for most landlords is the time it can take to evict a tenant who stops paying their rent. It can result in a significant financial loss for those affected and can particularly hurt landlords who rely on rent to meet their mortgage commitments. Currently, most eviction notices are mailed, which means four additional working days must be allowed for delivery time and applications can only be made to the tribunal once the

eviction notice runs out. This bill will cut up to three weeks from the current process by enabling landlords to serve notices directly to the tenant's letterbox and apply to the tribunal for a hearing at the same time as serving notice. The tribunal has also been given broader powers to overlook minor errors in the content or service of notices. This will prevent landlords from having to start the whole eviction process again because of a simple mistake.

The second major criticism of the current law from landlords is the lack of certainty when they want to get their property back after the lease has expired. Presently, if the landlord seeks an eviction order from the tribunal the circumstances of the case must be considered. If the tenant can mount a good enough argument the tribunal has the power to refuse to make an eviction order. The bill removes this discretion and makes it certain that the tribunal must grant an eviction order if the lease has expired and proper notice has been given. This is a major win for landlords.

There are numerous other provisions in the bill which address the concerns of landlords—too many to mention them all, but among them is a new streamlined process to deal with goods left behind when a tenant moves out, which will reduce red tape and compliance costs. Landlords will no longer have to put an advertisement in a newspaper about unclaimed goods or pay to have them moved and stored for 30 days. Extra grounds for gaining access to the rented premises have been added. The bill extends the time for landlords and agents to lodge a tenant's bond. Disputes about the accuracy of condition reports will be able to be taken to the tribunal at the beginning of a tenancy rather than left to fester until the tenancy ends. New grounds on which a landlord may seek immediate termination have been provided.

The bill will limit the capacity of tenants to recover compensation from the landlord following a break-in if they have previously failed to raise concerns about the security of the premises. Specific provision has been made for landlords to recover costs from tenants such as replacing lost keys and bank fees for bounced cheques. Sometimes landlords who go to the tribunal can find rent increase notices from years ago being trawled over and the slightest mistake can result in them having to repay thousands of dollars to the tenant. The bill will put an end to this unjust situation with tenants only being able to contest errors in notices from the past 12 months.

Of course, as well as these many benefits for landlords, the bill will improve and clarify the laws as they apply to tenants. For example, this bill will tighten the regulation of bad tenant databases to make them fairer, provide more protections and certainty for victims of domestic violence, and ensure tenants are given at least one free and easy option to pay their rent rather than being charged an extra fee for the privilege. These are only a few examples that will make life easier for tenants, but the most significant reforms in this bill are actually specifically designed to improve outcomes for both tenants and landlords.

One of the provisions that has attracted a lot of attention is section 75, under which tenants will be able to sub-let part of the property, such as a spare room or an unused garage, or change one of the named tenants on the lease, for example, if the relationship between flatmates breaks down. There has been a well-orchestrated misinformation campaign suggesting that tenants will be able to sublet without asking or even telling the landlord. That is simply not correct. The bill continues the current requirement for tenants to obtain the landlord's consent before making such arrangements.

The bill retains the existing control of landlords over sub-letting the whole property. In terms of partial sub-letting, landlords will still have the right to say no if they have a reasonable objection. As most landlords are reasonable people this should not present any major hurdles. All other States in Australia require landlords to be reasonable about any sub-letting request, not just sub-letting part of the premises as we are proposing in this bill. The Government does not believe that in 2010, with shared households increasing, it is appropriate that landlords have an absolute and unchallengeable right to decide who their tenants can live with.

Having said that, the Government has listened to those who asked for more clarity about what is meant by "reasonable" in those circumstances. Section 75 (3) has been inserted into the bill to make it clear, for instance, that it would be reasonable for a landlord to reject a request if it would exceed the number of occupants permitted by the landlord under the lease, or result in overcrowding, or if the person is listed on a bad tenant database.

Another area of the bill which has attracted comment in the media and elsewhere is division 6 of part 3. This deals with tenants' requests to add a fixture or make a minor alteration to the premises. Let me be clear that tenants will still have to obtain the landlord's consent before making any alterations, as they do now. Any failure to do so will still be a breach of the lease. The types of minor changes intended to be covered by this provision include window safety measures for young children so they do not fall out, extra security features such as a deadlock on the front door, installing a grab rail in the bathroom to assist elderly occupants or tenants with a disability, getting a home phone or internet cable connected, hanging a picture in the living room or planting some flowers in the garden.

Remember, I am talking about minor changes that tenants are willing to organise and pay for themselves to improve their living conditions. Currently such requests can be unreasonably refused leaving no right of appeal for the tenant. Having a more balanced approach to this issue will encourage more tenants to do the right thing

and ask up front, rather than make the change without seeking consent for fear of refusal. The bill will not give tenants a licence to do what they like to the property, despite the scare campaign from those opposite who claim tenants will be able to cement the garden, rip out the kitchen or add an extra room out the back, all without landlord or council approval. That is simply not true.

The bill makes it absolutely clear that a landlord is well within rights to refuse any request if it would involve structural changes, if it is inconsistent with the nature of the property, if the change would not be reasonably capable of rectification, repair or removal, or the work is prohibited under any other law. Furthermore, tenants can be required to make good at the end of the tenancy or compensate the landlord for the costs involved if the work is not done to a satisfactory standard or is likely to adversely affect the landlord's ability to let the premises to other tenants.

In submissions to the consultation draft the main area of concern raised by landlords and agents related to cosmetic changes, and in particular painting. It was suggested that tenants, if they do the work themselves, may not paint to an acceptable standard or may use a colour scheme that would not be palatable to future tenants or buyers, forcing landlords to incur considerable cost and effort in rectifying the work. In response to those legitimate concerns, the Government has omitted the word "cosmetic" from the bill and added "internal or external painting" to the list of requests that it would not be unreasonable for a landlord to refuse.

After subletting and alterations, the third area of major concern identified by landlords related to the proposed break fee. The break fee is a set penalty payable by a tenant who breaks their lease early. The intention here was to provide a simpler means for resolving the parties' obligations when a lease is broken, thereby providing certainty for both tenants and landlords, and removing these disputes from the tribunal. When added to the high cost of relocation, a break fee would ensure that tenants did not make a decision to walk away from a lease lightly.

Some submissions from landlords supported the proposal, correctly observing that in some cases they would benefit from having the outgoing tenant paying a break fee while the new tenant paid rent as well. Under the current legislation, this is not possible as the former tenant can only be charged until the new tenant takes over. Having a break fee would remove restrictions on landlords over the reletting process. It may also reduce the incidence of tenants simply packing up and disappearing or ceasing to pay their rent as a way of getting out of the lease. Other landlords submitted that a break fee would undermine the purpose of having a lease. It was considered that, while the break fee proposal may benefit some landlords, it may hurt landlords with hard-to-rent properties or those at the upper end of the market.

In order to accommodate the differing views about the merits of the break fee proposal, the bill has been refined to make break fees optional. The parties can agree to have a break fee term in their lease if they wish. Landlords who do not see any merit in the break fee proposal can choose not to include a break fee term in the lease, in which case the current law that a tenant who breaks a lease is liable to compensate the landlord for any loss, with the landlord having an obligation to mitigate those losses, will continue to apply.

A number of landlords and agents also expressed concern about the proposed extension in the bill of the notice period from 60 days to 90 days if tenants are asked to vacate after their lease has expired. On the other hand, tenant groups argue that even 90 days is too short, especially in a tight rental market like we have now, and some suggest landlords should not be able to give notice without a reason. This is a good example of the competing interests I mentioned earlier. The Government believes that 90 days is a fair and reasonable period of time for tenants who have done nothing wrong in which to try to find suitable and affordable alternative accommodation. It is the same period that they have in South Australia. A number of other jurisdictions have even longer notice requirements.

It is illogical to look at the 21 days' notice required from tenants who wish to vacate and say that the bill is biased because this number is not equal with the notice that landlords have to give. They are completely different situations. All the landlord has to do is advertise the availability of the premises. Tenants, on the other hand, will need to move out of their home. They will need to find money to pay for their moving costs; they will need to look for and find alternative accommodation; and then they will need to make arrangements for all of their goods and belongings to be packed and moved. If they have children, they may also need to find a new school.

Under the existing laws landlords have to specify a precise day for the tenant to vacate. Many tenants simply wait until after that day comes and goes before they start looking for another place because if they leave any earlier they have to give their notice or pay double rent. The bill will address this issue by giving tenants the flexibility to move out at any time during the notice period. This will encourage tenants to look for a place as soon as possible, meaning that many landlords may get their property back well before the 90 days run out, or even before the existing 60 days, reducing the need for a tribunal hearing.

A further claim from real estate industry groups is that the bill somehow opens the door to the possible reintroduction of rent control. The Government does not accept that this is the case given that the excessive rent provisions largely mirror those in the existing legislation and in other States. Nevertheless, to remove all doubt, a provision has been added to the bill making it abundantly clear that the income of the tenant or their ability to

afford a rent increase are not relevant factors for the tribunal to consider in deciding whether or not a rent increase is excessive.

Some submissions drew attention to what they saw as a proliferation of penalty provisions in the draft bill. This largely resulted from the bringing together of the penalty provisions from the two existing acts. Naturally, there will always be more offence provisions against landlords, as tenants who do the wrong thing are usually penalised by being evicted and there is no need to impose further penalties on top of that. However, upon further review, a number of penalties have been reduced and a number of other proposed offences have been taken out altogether, as they are no longer seen as necessary.

Those matters I have just outlined address all of the major issues identified by some landlords and agents during the public consultation period. It would be wrong to try to imply that all landlords and agents are opposed to the reforms. Positive feedback has been received from a number of landlords and agents who support what the Government is trying to do. The bill contains a range of measures to improve the rights of tenants, who include some of the more vulnerable members of our community.

Part 11 of the bill will tighten the regulation of bad tenant databases. Any person listed on a tenancy database faces great difficulty in being accepted to rent a property. Such listings should, therefore, not be made lightly or for frivolous reasons. Importantly, part 11 of the bill will, for the first time, give the tribunal power to determine disputes and make orders in respect to listings. Currently, tenants have nowhere to go if they believe they have been wrongly or unjustly listed on such a database. Tenants who are knocked back when applying for a property because of a listing will need to be told how they can go about finding out what the database says about them.

Part 11 has been based on uniform provisions developed in conjunction with all other Australian jurisdictions in recognition of the fact that tenancy databases operate across borders. The bill will also, for the first time, introduce provisions to deal with disputes between co-tenants. One co-tenant will be able to give notice to the other co-tenant and the landlord to have his or her name taken off the lease if he or she decides to move out. Under the current laws, co-tenants can remain legally liable for anything that goes wrong even years later. Victims of domestic violence in rental properties will have the right to take action to secure the premises and to seek to take over the tenancy if their name is not already on the lease. Currently, the law protects the perpetrators of violence if they are tenants—not victims—and this is clearly an unjust situation in need of reform. These changes have been welcomed, particularly by domestic violence advocates.

The bill will also guarantee the continuation of a tenancy where a tenant, having fallen behind with the rent, catches up or complies with an agreed repayment plan. This is designed to help genuine tenants who encounter temporary financial difficulties. The current law says the opposite: Payment of rent once notice has been served does not prevent eviction action from continuing. This is in nobody's best interest. It provides no incentive to tenants to try to do the right thing and pay what they owe, leaving landlords with a large debt with little chance of recovery. Tenancies that can be salvaged should be. A guarantee of continuation will reduce unnecessary terminations and homelessness.

However, the bill has been amended in response to suggestions that it could be open to abuse by unscrupulous tenants deliberately and repeatedly waiting until the very last minute before paying their rent. The bill now gives the tribunal the power to overrule the continuation guarantee where tenants show a flagrant or habitual disregard for their obligation to pay rent on time. Section 35 will require tenants to be given at least one free and easy option to pay their rent in response to the increasing use of third party rent collection agencies imposing fees on top of the rent. This is becoming a major concern for many tenants who are often given no choice but to pay by a method that incurs the extra fee.

Section 39 of the bill will require rented premises to contain water efficiency measures before tenants can be asked to pay for water usage. This has been modelled on the Queensland tenancy laws. As tenants pay for the water they use, the Government believes it is only fair and reasonable that landlords ensure that taps, showerheads and other water fittings in the property are efficient and are not wasting water at the tenant's expense. The bill provides a 12-month transitional period for existing landlords to get any necessary work carried out. This reform reinforces the Government's commitment to water conservation, particularly when a large part of the State remains in drought. It will not impose a significant cost on landlords. While the efficiency standards will be set by regulation, it is envisaged that Sydney Water's Waterfix service, costing only $22, would be sufficient to make rental premises water efficient.

Division 2, part 6 of the bill will ensure that any personal documents that are left behind by a tenant at the end of a tenancy, such as photographs and passports, are not simply disposed of by the landlord because they are of no monetary value. While other goods can be more easily replaced this is clearly not the case with personal documents, some of which may be of huge sentimental value to the former tenant. The bill requires that such documents be kept in a safe place until reclaimed for up to 90 days.
The bill will also reform and modernise the laws surrounding reservation fees, or what are called in the bill, "holding deposits". Proposed section 24 of the bill ensures that multiple holding deposits cannot be taken from prospective tenants for the same property. The bill will also put an end to the practice of taking such fees from people who may not have even looked at the property or formally applied. Holding deposits will be able to be

accepted only once the premises can be truly reserved, when the application for tenancy has been approved by the landlord.

These are only some of the main changes in a significant reform package, which the Government believes will benefit both tenants and landlords now and well into the future. The bill is predominantly about modernising and streamlining the existing laws and addressing areas of common dispute. It is the first comprehensive revamp of the laws in more than 20 years. In the last financial year almost 45,000 tenancy matters were heard by the Consumer, Trader and Tenancy Tribunal. While this figure was down some 13 per cent on the previous year, tenancy applications still make up the bulk of the tribunal's workload, accounting for 75 per cent of all applications. There will always be disputes between landlords and tenants; that is simply the nature of the rental industry. The bill seeks to provide greater clarity and certainty on a wide range of issues, including reasonable security, access for sale purposes, the fees and charges payable by tenants, bond claims and what cannot be put in a lease. This will help to reduce disputes in these areas.

I would like to thank all individuals and groups who have taken the time to have their say during the course of the review, including the Tenants Union, the Real Estate Institute, the Property Owners Association, the Law Society of NSW, the Legal Aid Commission, Shelter NSW, the Federation of Housing Associations, the Combined Pensioners and Superannuants Association, Housing NSW, the Property Council of Australia, EAC Multilist, the Council of Social Service of NSW, individual tenant advice and advocacy services, the Consumer, Trader and Tenancy Tribunal and many others. The bill is a positive demonstration of the Keneally Government's commitment to improving the lives of the people of New South Wales. I commend the bill to the House.